IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL SIDE JURISDICTION

CHAMBER SUMMONS NO. 1629 OF 2004
IN
EXECUTION APPLICATION NO.282 OF 2004
IN
SUMMARY SUIT NO.178 OF 2001

M/s.Mittal Capitals (India) Ltd. ...Plaintiff
Vs.
M/s. Sippy Films & Ors. ...Defendants
And
Laila Vijay Sippy ...Applicant

Mr. M.J. Jamdar for Applicant
Mr.Raj Jayasing for Plaintiff

CORAM: **ROSHAN DALVI, J.**
DATED : 20TH DECEMBER 2005

P.C.

1. The Applicant, who is the mother of Defendant No.5, has taken out this Chamber summons for raising the attachment levied on the residential premises being Flat No.20-A, Lands End Co-Operative Housing Society Ltd., Dongersi Road, Mumbai 400 006, which is stated to be her residential premises gifted to her under a Deed of Gift executed on 30th July 2004. The suit was decreed on 28th January 2003. The order granting the decree dated 28th January 2003 shows the presence of Defendant No.5 at the time of hearing. The Summons for Judgment taken

out by the Plaintiff was granted and the decree in terms of the prayers in the Summons for Judgment was passed interalia against Defendant No.5.

2. The draft decree was got prepared by the Plaintiffs' Advocate and was kept by the office of this Court for settlement of the decree on 13th November 2003. Notice of that Meeting was given interalia to the Defendant No.5 by the Plaintiff's Advocate. Similarly such notice was also given to the Advocate interalia by Defendant No.5.

3. These facts show that all the Defendants including Defendant No.5 had notice of the passing of the decree as well as of the proceedings pursuant to the said decree being passed.

4. In execution of the decree an attachment came to be levied on three immovable properties of the Defendants on 7th September 2004. This application is for lifting attachment on one of these properties.

5. The applicant claims title to the attached property relying upon a Deed of gift executed in her favour by Defendant No.5, her son on 30th July 2004. The stamp Duty thereof was paid on 23rd July 2004. The document came to be registered on 5th August 2004. It is from a son to his mother. It is a Gift Deed, it is therefore without consideration.

6. The share certificate of the Co-operative Society in respect of the flat gifted by Defendant No.5 to his mother is issued in the name of Defendant NO.5 himself It therefore, shows that the Defendant No.5 was the member of the Society from the very inception of the Society. The reverse of the share certificate shows that on 10th March 1992 the applicant was added as associate member. Defendant No.5 continued to be the member even after 10th March 1992.

7. The aforesaid chronology and the transfer show that after having notice of the decree passed interalia against Defendant No.5 and after having come to know of the execution of the decree, Defendant NO.5 sought to create a transfer by way of a gift to his mother.

8. The Plaintiff contends that the transfer is a fraudulent transfer under Section 53 of the Transfer of Property Act.

9. The relevant part of the said Section sets out what is the fraudulent transfer thus :

> " (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.
>
> Nothing in this sub-section shall

impair the rights of a transferee in good faith and for consideration."

10. A Deed of Gift is one of the 5 transfers contemplated under the Transfer of property Act. The timing of the transfer itself shows the intent to defeat or delay the claim of the Plaintiff who is creditor of Defendant No.5. The transfer is voidable at the option of the Plaintiff. He has challenged the transfer.

11. It is contended on behalf of the Applicant that the flat attached belonged to her grand-mother and was intended to be gifted to her in 1972 but could not be because at that time she was not an Indian National and transfers of immovable properties could not be affected in the names of any foreign nationals then. The prohibition or restriction against such transfers was under the provisions of Foreign Exchange Regulations Act1973. The said Act was not in force in 1972, when the said transfer was stated to be contemplated from the grandmother of the applicant to the applicant.

12. The Advocate for the Applicant drew my attention to the endorsement made on the copy of the share certificate produced by the applicant showing that it is a duplicate share certificate issued in lieu of the original share certificate dated 20th October 1968 duly transferred under Reference No.7 of 1973 dated 12th November 1972.

13. The original share certificate is not produced and hence it cannot be seen whether the flat originally stood in the name of the Applicant's grandmother. In any event it is seen that it was not transferred to the applicant all along. Even after the applicant was added as an associate member, it continued in the name of Defendant No.5. The applicant's case that the property was always meant and intended to be for herself is not primafacie shown. In any event that does not matter. The property continued to stand in the name of Defendant No.5. If that was the intention he held it benami for her. It would then fall within the mischief of Section 4 of Benami Transactions Act, 1988.

14. The applicant has not shown that the property belongs to her and not Defendant no.5 from the very inception. The deed of gift itself shows that it was transferred to her only after the decree was sought to be executed. She therefore, accepts that Defendant No.5 was the legal owner until the transfer was made to her. The transfer, being a gift, is necessarily without consideration. That transfer therefore falls within the perview of Section 53 of the Transfer of Property Act,1882. The application to raise the attachment made in this Chamber summons is required to be considered in this light.

15. The applicant's claim for attachment is required to be

adjudicated under Order 21 Rule 58 of the C.P.C. The applicant has contended that the property attached is not liable to such attachment. The applicant has preferred this claim and objection to attachment under Order 21 Rule 58(1). This Court is required to deal with the said claim under Order 21 Rule 58(2). For the reasons stated above the claim has to be disallowed under Order 21 Rule 58(3)(b).

Hence, the following order.

(a) The Chamber Summons is dismissed.

(b) Ad-interim relief granted is vacated.

(c) The stay already granted is extended for 8 weeks.

(ROSHAN DALVI,J.)